I. Claims 88 and 89, drawn to a MUM-1 protein, classified in class 530, subclass 350, and

II. Claims 90-92, 98,102, and 103, drawn to antibodies raise against a MUM-1 protein, classified in class 530, subclass 387.1.

The Examiner stated that the inventions are distinct, each from the other because of the following reasons: "Inventions I and II are unrelated. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different modes of operation, different functions, or different effects (MPEP §806.04, MPEP §808.01). In the instant case the different inventions different functions and different effects. For example, the antibodies of Group II can be used in *in situ* localization assays and the proteins of Group I could not be used in such assays."

The Examiner stated that because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification and have acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

In response to this restriction requirement, applicant hereby elects, with traverse, to prosecute the invention of Examiner's Group I, claims 88 and 89, drawn to a purified MUM protein,

wherein the protein is a MUM-1 and wherein the MUM-1 protein is a human protein having the same amino acid sequence as shown in Figure 5B (SEQ ID NO: 14).

Applicant notes that 35 U.S.C. §121 states, in part, that "[i]f two or more independent and distinct inventions are claimed in one application, the Commissioner may require the application to be restricted to one of the inventions." [Emphasis added]. Applicant requests that the restriction of Examiner's Group I from Examiner's Groups II be withdrawn in view of the fact that the claims of Examiner's Group I are not independent of Examiner's Group II.

Under M.P.E.P. §802.01, "independent" means "there is no disclosed relationship between the subjects disclosed, that is, they are unconnected in design, operation and effect." The claims of Examiner's Group I, drawn to a directed to a purified MUM protein, wherein the protein is a MUM-1 and wherein the MUM-1 protein is a human protein having the same amino acid sequence as shown in Figure 5B (SEQ ID NO: 14), as recited in claims 88 and 89, are related to the claims of Examiner's Group II, as set forth in claims 90-92, 98, 102, and 103, since the antibodies are directed to the purified MUM-1 protein of claim 89 and the antibodies are capable of specifically recognizing MUM-1 protein wherein the MUM-1 protein is a human protein having the same amino acid sequence as shown in Figure 5B (SEQ ID NO: 14). Applicant therefore maintains that the claims of Groups I and II are related and that Groups I and II are not independent.

Accordingly, restriction is not proper.

Applicant therefore respectfully asserts that two or more independent and distinct inventions have not been claimed in the subject application because the groups are not independent under M.P.E.P. §802.01. Therefore, restriction is improper under 35 U.S.C. §121.

Additionally, applicant points out that M.P.E.P. §803, the Examiner must examine the application on the merits, even though it includes claims to distinct inventions, if the search and examination of an application can be made without serious burden. There are two criteria for a proper requirement for restriction, namely (1) the invention must be independent and distinct; AND (2) there must be a serious burden on the Examiner if restriction is not required.

Applicant maintains that there would not be a serious burden on the Examiner if restriction were not required. A search of prior art with regard to claims 88 and 89 directed to a purified MUM protein, wherein the protein is a MUM-1 and wherein the MUM-1 protein is a human protein having the same amino acid sequence as shown in Figure 5B (SEQ ID NO: 14) of Group I, will reveal whether any prior art exists as to antibodies directed to the purified MUM-1 protein of claim 89 and antibodies capable of specifically recognizing MUM-1 protein wherein the MUM-1 protein is a human protein having the same amino acid sequence as shown in Figure 5B (SEQ ID NO: 14), wherein the MUM-1 is a human

protein and wherein the antibodies are monoclonal antibodies (claims 90-92, 98, 102, and 103) of Group II. Applicant notes that both groups have been classified in the same class, class 530.

Since there is no burden on the Examiner to examine Groups I and II in the subject application, the Examiner must examine the entire application on the merits.

Applicant maintains that claims 88-92, 98, 102 and 103 define a single inventive concept. Accordingly, applicant respectfully requests that the Examiner reconsider and withdraw the restriction requirement and examine claims 88-92, 98, 102 and 103 on the merits.

If a telephone conference would be of assistance in advancing the prosecution of the subject application, applicant's undersigned attorneys invite the Examiner to telephone him at the number provided below.

No fee is deemed necessary in connection with the filing of this Communication. However, if any fee is required, authorization is hereby given to charge the amount of such fee to Deposit Account No. 03-3125.

Respectfully submitted,

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I hereby certify that this correspondence is being deposited this date with the U.S. Postal Service with sufficient postage as first class mail in an envelope addressed to:
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